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1952

File No. O. Police/52 pt. II

Legal Dept.

A **BRANCH**

Subject:— Opinions under the Bombay Police Act 1951

(for previous papers pl. see pt. I)

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File No. O. Police II/52
pt. II

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C O N T E N T S.

Legal Department File No. C. Police/53. Pt-II.

Sr. No.	S.I./C.No.	Subject	Pages.
		Opinions under the Bombay Police Act, 1951.	
1.	1445-Confl., 17-12-52.	Re: Action to be taken under Sec. 51 of the Act in respect of the loss or damage caused in the riots.	1-2
2.	10873/1-7-52.	1) Whether if a punishment is to be inflicted upon a Police Inspector by Govt. which alone is competent to do so under the Act, the proceedings should also be held by Govt. or whether the same can be held by a Supdt. of Police or a Dy. Commissioner of Police; and 2) Whether the Commissioner of Police can exercise his powers of revision under Rule 13(2) in the present case.	3-8.
3.	1014-Confl., 6-12-52. (G.A. to Adv. Genl.) No.1462-Confl., 10-12-52. (Adv. Genl's No.26 dt. 8 10-12-52)	Whether after the coming into force of the Bhby Police Act, 1951, it is necessary to consult the B'bay Public Service Commission before transferring Police officers from the Greater B'bay to the Districts and vice-versa.	9-16
4.	1444-Confl./24-12-52.		
4.	No.32826 23-12-52.	G.R. H.D.No.8804/6-I. dt. 17-12-52. Re: State Services Classification of posts of— as posts belonging to the—	

KAB/15-6.
6 c.

L.D.R.I. No.1112-Confl. dt.15-10-52.

Submitted.

Id/- G.B.J. 15/10

D.S. (Cr. Law)

Shri Bego

Id/- 16-10-52

Submitted.

In his opinion No.13535 dated the 10th August 1952, R.L.A. had held that action under sec. 51 of the Bombay Police Act, 1951 would be possible in respect of the loss or damage caused in the riots which took place at Dohad on 3-8-1951 notwithstanding the fact that the occurrence took place before the Act came into force. The D.M., Panchmahals has, however, now pointed out that in respect of these riots three cases were launched by the Police and in all these cases the Sessions Judge has held that there was no unlawful assembly in any of these cases; and that this finding will preclude action under sec. 51. L.D. considers that the view taken by the D.M. is correct and that this is not a fit case for action under sec. 51 of the Act. The R.L.A. is, however, requested to advise.

2. In view of the findings of the Sessions Judge that there was no unlawful assembly, it would not be desirable to take action under sec. 51 of the B.P.Act. The view taken by L.D. is correct.

Id/- 16/12

D.S.(Cr. L.) Sd/- 16/12/52

R.L.A. Para 2 to be the reply

Id/- P.M.L. 16/12

U.R. to H.D. No.1408-Confl. dt. 17-12-52.

UAH/18-6.
1 c.

The questions referred to R.L.A. are:

(1) Whether, if a punishment is to be inflicted upon a Police Inspector by Government which alone is competent to do so under the Bombay Police Act, 1951, the proceedings should also be held by Government or whether the proceedings can be held by a Superintendent of Police or a Dy.Commissioner of Police; and

(2) Whether the Commissioner of Police can exercise his powers of revision under Rule 13(2) in the present case of Shri Bharvirkar.

2. The assumption that Government alone is competent to inflict a punishment on an Inspector is not correct. Section 5(b) of the Bombay Police Act, 1951 enacts that subject to the provisions of this Act the recruitment, pay, allowances and all other conditions of service of the Police Force shall be such as may from time to time be determined by the State Government by general or special order: Provided that (i) the rules or orders governing the recruitment, pay, allowances and other conditions of service of the members of the Police Force constituted under any of the Acts mentioned in Schedule I and deemed to be members of the Police Force under section 3 shall continue in force until altered or cancelled under clause (b). Government it appears has not as yet made any orders under clause (b) and in the circumstances the old orders would continue to remain in force if they are not inconsistent with the provisions of the new Act. Appointments of Inspectors under the old Act were made by the Commissioner of Police (see Rule 3 of the Rules made under section 124a) of the Bombay City Police Act) and under the old rules i.e. under the rules made under section 7(3) of the City of Bombay Police Act, 1902, so far as disciplinary matters with regard to an

Inspector are concerned (a) the departmental inquiry was to be held by the Superintendent of the Division and (b) the order of dismissalx was to be ~~xxxx~~passed by the Commissioner of Police or by a Deputy Commissioner of Police authorised by him under section 6(2) to exercise and perform any of the powers conferred upon and duties assigned to the Commissioner of Police under section 7. As no new rules have been made both the old Rules iwe. Rule 3 framed under section 12 regarding appointment and Rule 3(c) framed under section 7 regarding dismissal would remain valid and operative under the new Act as they are not inconsistent with any of the new Act as they are not inconsistent with any of the provisions of the new Act and there would, therefore, be no objection to the Commissioner of Police's dismissing the Inspector after following the procedure laid down in the Rules. It would not, however, be open to the Commissioner of Police to delegate his power to the Deputy Commissioner of Police as such delegation would be contrary to the provisions of Article 311(1) of the Constitution if the appointment of the Inspector is made by him.

2. On the second question we may first consider rule 13(2). Rule 13(2) reads as follows:

> "The Commissioner of Police may call for and examine the record of any order of punishment passed under these rules for the purpose of satisfying himself as to the legality or propriety of such order, and if in any case it shall appear to the Commissioner of Police that any such order should be altered or reversed or that a fresh departmental inquiry should be held, he may pass such order in the case as he may deem fit:
>
> Provided that the Commissioner of Police shall not call for the record of any such order during the period in which an

an appeal is allowed against such order or if an appeal has been made until it has been decided."

The purpose of this rule is quite clear from the manner in which it is framed; and that purpose is to allow the Commissioner to interfere only where an order of punishment has been passed. The words "record of any order of punishment passed" show that he cannot send for the record in a case where no such order has been passed. Secondly, the object for which the Commissioner sends for the record is to alter or reverse the order or to direct a fresh departmental inquiry, which are all appellate orders in favour of the delinquent person and not to his prejudice. That again is underlined by the proviso which disables the Commissioner from sending for the record during the period or subsistence of an appeal, which means that the order in which the Commissioner is expected to review is an order originally passed against the delinquent, as otherwise no question of an appeal can arise.

3. Rule 15A no doubt speaks of the "record in respect of any order of punishment" which words are wider than the words "record of any order of punishment". Similarly; the rule also in terms contemplates enhancement. The first proviso to that rule further contemplates that an order can be made to the prejudice of the person concerned. However, there is the intial limitation that Government can call for and examine the record only in respect of any order of punishment passed by the Commissioner of Police either in appeal or revision under these Rules. In other words, there must be some order of punishment passed by the Commissioner either in appeal or revision before Government gets jurisdiction to call for and examine the record. Where the Commissioner has not or cannot pass an order of punishment, there is no scope for invoking rule 15A at all.

4. In the present case since the Appellate Board has directed reinstatement and has not awarded any punishment, the Commissioner cannot call for record under rule 13(2), and it follows, therefore, that Government cannot intervene by recourse to rule 15A.

Id/- P.K.L. 1/7
Remembrancer of Legal Affairs.

U.R. to H.D. No.10673, dt. 1st July 1952.

RAR/18-6.
4 c.

Legal Department.

Statement of the Case.

The question under consideration in this file is whether after the coming into force of the Bombay Police Act, 1951, it is necessary to consult the Bombay Public Service Commission before transferring Police Officers from the Greater Bombay to the Districts and vice versa. The Public Service Commission suggest that the proper course in such cases would be to make rules under the Bombay Police Act, 1951, for the amalgamation of the separate cadres of the Police which at present exist for the Greater Bombay and the Districts. The Commission also state that so long as such amalgamation is not actually effected, transfers from one cadre to another will involve change in cadre and emoluments and therefore prior consultation with them would be necessary. Under article 320(3)(b) of the Constitution it is necessary to consult the Public Service Commission on the principles to be followed in making appointments to Civil Services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. In consequence of the provisions of section 3 of the Bombay Police Act, 1951, the Police for the whole of the State has been made one single Police Force. There are no longer two separate forces as there were under the City of Bombay Police Act, 1902, and the Bombay District Police Act, 1890. It is true that under clause (i) of the proviso to section 5 of the Bombay Police Act, 1951, the rules or orders applicable to the Forces constituted under the said Acts are to remain in force until Government determined the conditions of recruitment etc. by a general or special order. No such orders are yet made. But the omission to make the orders would not make the old forces to

be seperate forces or services. Both have become the Branches of one Police Force. Under rule 3(c) of the Bombay Civil Services Classification and Recruitment Rules read with Appendix A, different services under the Bombay Government are specified. The word "services" in article 320(3) (b) in the Constitution appears to have been used in the same sense. The Greater Bombay and District Cadres of the Police cannot be held to be services within the meaning of that article.

2. The Public Service Commission however do not accept the above view. The Commission do not dispute the competence of Government to effect ~~x~~ transfers from the posts e.g. of Superintendents of Police in Greater Bombay to the posts of Deputy Superintendents of Police and vice versa in view of the unification of the Police Force. But they consider that in the absence of orders actually bringing officers of the rank of Superintendents of Police, Greater Bombay, and Deputy Superintendents of Police into a common cadre on a common scale of pay, transfers of Superintendents (Greater Bombay) as Deputy Superintendents of Police and vice versa would amount to ransfers from one service to another and that prior consultation with them would be necessary. The Commission also invite attention to the fact that in the Bombay Civil Services Classification and Recruitment Rules the posts of Deputy Superintendents of Police are included in the Bombay Police Service while those of Superintendents of Police in Greater Bombay are included in the General State Service and that the scales of pay and source of normal recruitment are entirely different. The Commission therefore consider ~~tx~~ that as long as no order has been made providing that the posts of Deputy Superintendents of Police are equivalent to those of Superintendents of Police in Greater Bombay and prescribing a common scale of pay and common terms of recruitment etc. transfers from one category to another must be regarded as transfers from one service to another and that the provisions of article 320(3)(b) would be ~~x~~ attracted. As there is a difference of opinion and the matter is of importance, the Advocate General is requested to advise in the matter.

Id/- J.R.D. 4/10
Additional Secretary to Government

KAN/18-6.
4 c.

U.O. to Advocate General, Bombay No.1014/A, Confl. dated the 6th October 1952.

Advocate General's Chambers,

26 of 1952.

High Court,

Bombay, 18th December, 1952.

U.R. to Advocate General,
Bombay No.1014/A confl.
dated 6th Oct., 1952

As a result of section 3 of the Bombay Police Act, 1951, the Police for the whole of the State has been made one single Police Force. Omission to make the orders under clause (1) of the Proviso to section 5 of the Bombay Police Act, 1951, would not make the old Forces to be Separate Forces or Services. Accordingly the provisions of article 320(3)(b) would not be attracted.

Sd/-

Advocate General of Bombay.

KAN/18-6.
4 C.

Legal Department.

A copy of the Advocate General's Opinion No.26 of 1952 together with a copy of the Statement of the Case prepared for him is sent herewith.

Id/-J.R.D. 22/12

Additional Secretary to Government.

U.R. to P. & G.D. No.1444/A-Confl., dated the 24th December 1952.

KAR/15-6.
4 c.